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MAR 16 2004

In re Application of
Michlin
Application No. 10/614,654
Filed: July 7, 2003
Attorney Docket No. N/A
FOR: DISPOSABLE STRIP HOLDER
INSTALLATION DEVICE AND PLACEMENT
HOLDING DEVICE AND METHOD FOR
COPIERS, LASER PRINTERS, FAX MACHINES
AND FOR TONER CARTRIDGES USED
THEREIN

OFFICE OF PETITIONS

DECISION DISMISSING
PETITION

This is a decision on the petition filed December 29, 2003 requesting, in effect, withdrawal of the Notice of Omitted Item(s) in a Nonprovisional Application (Notice), mailed October 27, 2003. The petition will be treated under 37 CFR 1.53(e).

The petition is **dismissed**.

The application was filed on July 7, 2003. On October 27, 2003, the Office of Initial Patent Examination mailed a Notice stating that Figures 53, 54, 55A, 56, 57, 66 and 66A described in the specification appeared to have been omitted.

In response to the Notice, petitioner timely filed the present petition.

Petitioner contends that the allegedly omitted drawing figures were filed on July 7, 2003 and somehow misplaced in the Office. Petitioner asserts that 59 sheets of drawing figures were filed on July 7, 2003.

Petitioner states without equivocation or doubt that he checked the assembled application papers to verify that the application included all 59 sheets of drawings and then signed the certificate of mailing. Petitioner is reminded that certificate of mailing cannot be relied upon to establish an application's filing date. 37 C.F.R. 1.8(2)(i)(A).

The Office file is the official record of what was filed on July 7, 2003. It is noted that the original Utility Application Transmittal found in the application file has been annotated by an Office initial screener and states that only 57 sheets of drawing figures were received by the Office on July 7, 2003.

An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. In this regard, statements by individuals involved in the preparation and mailing of the original application reciting their personal recollection or belief of what was contained in the application that they reviewed and/or

mailed are no more persuasive of what was actually mailed than the contents of the official record. Such statements are usually made months after the actual events recited. In this case, the statements found in the petition were made more five (5) months after the application was actually mailed.

It is for this reason that the Office has established a practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice, which was long ago established and is well publicized, requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. See section 503, Manual Of Patent Examining Procedure (MPEP 503). Since petitioner has not submitted a copy of his postcard receipt, it is assumed that it, like the Utility Patent Application Transmittal, has been annotated to state that only 57 sheets of drawing figures were received by the Office on July 7, 2003.

The petition to withdraw the Notice of Omitted Item(s) in a Nonprovisional Application (Notice) mailed October 27, 2003 is **dismissed**.

Fortunately, petitioner has another avenue for relief available to him. The Office allows an applicant to rely upon an incorporation by reference of a parent application when a portion of the child application has been inadvertently omitted.

MPEP 201.06(c) states that:

... an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (emphasis supplied)

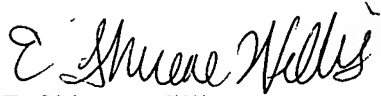
It is noted that the original Utility Patent Application Transmittal filed on July 7, 2003 states that the above-identified application is a divisional application of application No. 09/463,171 and that the entire contents of application no. 09/463,171 was specifically incorporated by reference into the above-identified application when the above-identified application was filed. Petitioner asserts that the omitted figures in the above-identified application are present in application no. 09/463,171.

If petitioner desires that Figures 53, 54, 55A, 56, 57, 66 and 66A be added to the application, the appropriate procedure is by way of preliminary amendment requesting the entry of the figures. Any such amendment should be filed prior to the first action on the merits and will be considered by the examiner. Any such amendment will, of course, be reviewed for new matter. See MPEP 608.02(a).

Since the present petition was not necessitated by any error on the part of the Office, the \$130.00 petition fee will not be refunded.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of July 7, 2003, using only the application papers filed on July 7, 2003. The two sheets of drawings submitted with the instant petition will not be entered at this time.

Telephone inquiries should be directed to the undersigned at (703) 308-6712.

A handwritten signature in cursive script, reading "E. Shirene Willis".

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy